

¹ Under the Board's *Rules of Procedure*, an appeal must be filed within 180 days from the date of issuance of an OWCP decision. An appeal is considered filed upon receipt by the Clerk of the Appellate Boards. 20 C.F.R. § 501.3(e)-(f). The 180th day following OWCP's May 4, 2021 decision was October 31, 2021. As this fell on a Sunday, appellant had until the next business day, Monday, November 1, 2021, to file a timely appeal. 20 C.F.R. § 501.3(f)(2). As this appeal was filed on November 2, 2021, the Board lacks jurisdiction to review the May 4, 2021 merit decision. See *P.H.*, Docket No. 19-1354 (issued March 13, 2020); *E.H.*, Docket No. 19-0859 (issued December 10, 2019).

pursuant to the Federal Employees' Compensation Act² (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board lacks jurisdiction over the merits of this case.³

ISSUE

The issue is whether OWCP properly denied appellant's request for an oral hearing as untimely filed, pursuant to 5 U.S.C. § 8124(b).

FACTUAL HISTORY

On October 24, 2016 appellant, then a 52-year-old city letter carrier, filed a traumatic injury claim (Form CA-1) alleging that, on October 24, 2016, he injured his right knee, right thigh, lower back, and left elbow when he fell down steps delivering a package, while in the performance of duty. He stopped work on October 24, 2016.

OWCP accepted the claim for: sprain of the right knee; effusion of the right knee; laceration of right arm muscles, fascia, and tendons at forearm level; strain of right quadriceps muscle, fascia and tendon; sprain of lumbar spine ligaments; lumbosacral spondylosis without myelopathy or radiculopathy; and lumbosacral spondylosis.

On February 19, 2021 appellant filed claims for compensation (Form CA-7) for disability from work for the period December 1, 2020 through January 31, 2021 and submitted additional evidence.

By decision dated May 4, 2021, OWCP denied appellant's claim for disability from work for the period December 1, 2020 through January 31, 2021.

On June 4, 2021 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review.

By decision dated June 28, 2021, OWCP denied appellant's request for an oral hearing as untimely filed as it was not made within 30 days of OWCP's May 4, 2021 decision. As the request was untimely filed, it concluded that he was not entitled to a hearing as a matter of right. OWCP considered a discretionary hearing, but declined to grant a hearing, noting that appellant could instead file for reconsideration before OWCP's district office and submit evidence in support of his disability not previously considered.

² 5 U.S.C. § 8101 *et seq.*

³ The Board notes that OWCP received additional evidence following the June 28, 2021 decision and on appeal. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

LEGAL PRECEDENT

Section 8124(b)(1) of FECA provides that a claimant for compensation not satisfied with a decision of the Secretary is entitled, on request made within 30 days after the date of the issuance of the decision, to a hearing on his or her claim before a representative of the Secretary.⁴ Sections 10.617 and 10.618 of the federal regulations implementing this section of FECA provide that a claimant shall be afforded a choice of an oral hearing or a review of the written record by a representative of the Secretary.⁵ A claimant is entitled to a hearing or review of the written record as a matter of right only if the request is filed within the requisite 30 days as determined by postmark or other carrier's date marking and before the claimant has requested reconsideration.⁶ Although there is no right to a review of the written record or an oral hearing, if not requested within the 30-day time period, OWCP may within its discretionary powers grant or deny appellant's request and must exercise its discretion.⁷

ANALYSIS

The Board finds that OWCP properly denied appellant's request for an oral hearing as untimely filed, pursuant to 5 U.S.C. § 8124(b).

On June 4, 2021 appellant requested an oral hearing before a representative of OWCP's Branch of Hearings and Review; however, this request was made more than 30 days after OWCP's May 4, 2021 decision.⁸ Section 8124(b)(1) is unequivocal on the time limitation for filing a request for a hearing.⁹ As such, the request was untimely filed and appellant was not entitled to an oral hearing as a matter of right.

The Board further finds that OWCP in its June 28, 2021 decision, properly exercised its discretionary authority, explaining that it had considered the matter and denied appellant's request for an oral hearing as his claim could be equally well addressed through a reconsideration request.

The Board has held that the only limitation on OWCP's authority is reasonableness. An abuse of discretion is generally shown through proof of manifest error, clearly unreasonable exercise of judgment, or actions taken which are contrary to both logic and probable deduction

⁴ 5 U.S.C. § 8124(b)(1).

⁵ 20 C.F.R. §§ 10.616, 10.617, and 10.618.

⁶ *Id.* at § 10.616(a).

⁷ *E.E.*, Docket No. 20-1290 (issued July 21, 2021); *J.T.*, Docket No. 18-0664 (issued August 12, 2019); *Eddie Franklin*, 51 ECAB 223 (1999); *Delmont L. Thompson*, 51 ECAB 155 (1999).

⁸ Under OWCP's regulations and procedures, the timeliness of a request for a hearing is determined on the basis of the postmark of the envelope containing the request. Federal (FECA) Procedure Manual, Part 2 -- Claims, *Hearings and Reviews of the Written Record*, Chapter 2.1601.4(a) (September 2020). If the postmark is illegible, the request will be deemed timely unless OWCP has kept evidence of date of delivery on the record reflecting that the request is untimely. *Id.*

⁹ *See M.M.*, Docket No. 19-1171 (issued October 22, 2019); *William F. Osborne*, 46 ECAB 198 (1994).

from established facts.¹⁰ The Board finds that the evidence of record does not establish that OWCP abused its discretion in denying appellant's request for an oral hearing before an OWCP hearing representative.¹¹

CONCLUSION

The Board finds that OWCP properly denied appellant's request for an oral hearing as untimely filed, pursuant to 5 U.S.C. § 8124(b).

ORDER

IT IS HEREBY ORDERED THAT the June 28, 2021 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: May 20, 2022
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

Janice B. Askin, Judge
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge
Employees' Compensation Appeals Board

¹⁰ *T.G.*, Docket No. 19-0904 (issued November 25, 2019); see *Daniel J. Perea*, 42 ECAB 214, 221 (1990).

¹¹ *J.G.*, Docket No. 19-0555 (issued March 14, 2019).